

SAN DIEGO POLICE PROTECTOR OR PERSECUTOR?

THE TWO SIDES OF A COIN



by Tezozomoc

Of every society that man has created, none has existed wherein rules for the control of human behavior have not been found necessary. Man, by nature, is incapable of dealing with absolute freedom of action. Rules codified into law are the necessary instruments of a society. In all societies that make the claim of representing the will of the people, i.e. Democratic, laws become the manifestation of the majority. Laws, however, have meaning only if there exists a vehicle for their enforcement, implementation, and/or interpretation. In contemporary society, these vehicles that are the legal forces of control (i.e. police, sheriff etc.), mirror the society which created them, and the rules. They act out, for that society, the extremes of tolerance or intolerance unconsciously permitted or held.

Quite frequently, these law forces, because they are the point of contact with the minority communities, come into serious conflict with those against whom the laws are acted out against. Violence often becomes the rhetoric of discourse.

The San Diego Police Department under previous administrations had been in constant conflict with minority groups. A total breakdown in communication had occurred, except that occasionally provided by infiltration, informers, or induced by beatings. With the forced retirement of Chief Hoobler, a new wave, it has been suggested, has swept into the San Diego Police Department. Vowing to bring "the department operations closer to the city and the rest of the community," Bill Kollender assumed the powerful position of Chief of Police.

The new chief indicated, among other things, to bring in more minority officers, to

expand training in readying officers for their roles in the community, to review disciplinary procedures, to create a different atmosphere, and to expand working with community groups, in order to establish mutual trust.

In response to a request from La Prensa, Chief Kollender, in the spirit of implementing the new attitude of the department, agreed to meet with Herman Baca, chairman of the Committee on Chicano Rights, at a joint press conference. The Committee has long been in the forefront of the struggle against police brutality, harassment, and the denial of the Chicanos' basic civil and constitutional rights by the members of the SDPD. Communication between this activist group and the department had deteriorated to nonverbal communication. Baca, also in a spirit of willingness to communicate for the good of the community agreed to meet the Chief. The interview, therefore, is a first. How well has the Chief performed? Has anything changed? La Prensa will be running a series of articles bringing out the outcome of this conference. You, the reader, make the judgement.

(La Prensa-L/P) Mr. Baca, Chief Kollender, I will be addressing a series of questions to both of you. An opportunity will be given to both to respond if you so desire. The questions will deal with the San Diego Police Department's role in apprehending undocumented workers and on the border task force. In the process, perhaps issues will become clarified and communication can be established.

The Attorney General of California recently (Aug. 25th) issued a state order limiting their arrests. The ruling stated that entry into the country is a

misdemeanor under federal law and California law says a police officer can make an arrest for a misdemeanor only if it is committed in his presence. On Aug. 30th, in an opinion issued by the State Attorney General's office, it was specifically stated that local or state police officers are forbidden to arrest an undocumented alien for entering the country illegally unless the officer personally sees the alien cross into the United States unlawfully. Now the question....

(Chief) That's not true. We have a legal advisor in the San Diego Police Department. He maintains contact with the Attorney General's office. He called them regarding the interpretation of this. What he told us is that the South Bay is no problem with any law enforcement officer arresting any undocumented alien. Outside the South Bay however, it depends on his destination. The legal term, ...if he has entered a house, a policeman can't make an arrest. But, if, for example, he is walking thru La Jolla with a knapsack or something, than obviously he can make an arrest. But regardless of this (Atty. General's) decision, my policy clarifies that. (SDPD 15.02.2, dated Sept. 2, 1977).

I do not want our officers stopping people because they are Mexican and asking them for papers. If that happens, we will take disciplinary action against them. If in the course of an investigation, an officer comes upon someone who is undocumented, we want them to hold them for the Border Patrol. They are to call the Border Patrol. I don't want them transporting them to the N.C.C.

(L/P) That, in essence, is the position you took on Aug. 29th and as far as we know, the Attorney General has never rescinded his order?

(Chief) That is correct.

(L/P) Your Aug. 29th statement seems to contradict the Attorney General's ruling.

(Chief) My statement of the 29th stands. I am not saying anything different.

(L/P) You indicated that in the course of an investigation that if you find an undocumented alien you will detain him. How do you make this determination?

(Chief) We get a call of suspicious persons at a location. Whatever the case may be, that's an indication. If the person speaks only Spanish, then we ask him for identification. The officers use the Spanish they learned at the Police Academy to find out who they are. If he says he is from Tijuana, we ask for papers.

(L/P) Does there have to be probable cause to stop them, commission of a felony?

(Chief) No, probable cause has nothing to do with it. Probable cause has nothing to do with a felony. Probable cause means that with an average person, under the same set of circumstances, we would have found it necessary

to talk to that person for the good of the public safety.

(Baca) Our position has been, within the Chicano community, that the police or any health, social agency of the city have no business in the field of immigration. It is a very complex technical field of law. Every ruling of the Attorney General has indicated that. Our position is the same. Police officers, who should have other priorities, have no business in enforcing federal immigration laws. A large number of people who are of a different color, or dress, or who are of a different nationality are being stopped in violation of their 4th and 14th constitutional amendment rights.

(Chief) I agree with him. We are not arresting people for violations of immigration law. We do not want to get involved with it.

(Baca) I would ask the Chief here during the Hoobler time, there was documentation that the SDPD was hanging around a bilingual class given at St. Judes, by Father Juan

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(Chief) That was 4 or 5 years ago. I can't respond for Ray Hoobler. My job is today. I have to have it in black and white.

(Baca) You have a complaint right now. There have been numerous complaints to your office about the SDPD going into Chicano Park and asking individuals for identification, just because they spoke Spanish and looked different. You have an official complaint by one David Avalos a UCSD graduate, who is currently attending Stanford University. He asked a police officer at Chicano Park on what basis was he stopping individuals and asking for identification. He responded, "because they were speaking Spanish."

(Chief) I don't believe that. I have bilingual people all over the place.

(L/P) Are there any established procedures for conducting this kind of operation?

(Chief) There are procedures for our field officers on how to conduct a field investigation according to law.

What Herman fails to tell you is that we have a lot of trouble that is happening at Chicano Park. We have a lot of dealings in smack and other drugs occurring. We have had a lot of complaints, a lot of assaults. The community can't use the park. Therefore the police check it. They are not out there checking for aliens.

(Baca) Let me correct that. The issue of enforcing criminal law is not the issue here. If in fact people are doing that, there are procedures. But, this thing of going in and asking for documentation, apart from responding to a legitimate call is the issue. Now, the Attorney General's opinion states the misdemeanor has to be witnessed by the officer.

(Chief) No question about that.

(Baca) Then the issue is when a person calls and says that someone is a suspicious person in La Jolla. The police, because that person speaks Spanish, or looks different...or as Sheriff Duffy used to say, "The person carries an onion bag over his shoulder"...that is the bone of contention...

(Chief) We have a lot of problems, Herman and I...We have a different perception.

(continued next week)

SAN DIEGO POLICE DEPARTMENT DEPARTMENT ORDER 15.02.2

September 2, 1977

TO: All Personnel FROM: W. B. Kolender, Chief of Police
SUBJECT: Undocumented Aliens

This order is intended to clarify the Police Department's policy with respect to the handling of undocumented aliens who come to the attention of San Diego police officers.

The primary responsibility for the enforcement of the federal immigration laws rests with the Immigration and Naturalization Service and the U.S. Border Patrol. Although state and local peace officers have the authority to assist in enforcing the immigration laws, it is the policy of the Department that officers shall not make an effort to look for violations of the immigration laws.

Officers may not therefore stop and detain individuals solely because of a suspicion the individual may be an undocumented alien. If, however, in the normal pursuit of an officer's investigation of criminal activity, the officer makes contact with an individual who admits or otherwise evidences his violation of 8 U.S. Code, Section 1325 (unlawful entry into United States-misdemeanor), a temporary detention would be justified. If probable cause exists to believe the individual has committed a criminal offense unrelated to unlawful entry into the United States, the individual may be taken into custody and either booked into County Jail or turned over to Border Patrol officers, depending upon the nature of the offense and other circumstances.

If probable cause to arrest for a criminal offense does not exist, the individual may nevertheless be turned over to Border Patrol officers at the location where the detention takes place. Except in situations where the detention occurs near the immediate area of the border, such as San Ysidro, the individual should not be transported by police officers to a federal booking facility.

SDPD - PROTECTOR OR PERSECUTOR?

(We continue with our interview with San Diego Police Chief Kollender, and Herman Baca by La Prensa. In previous issues the discussion had centered on the role of the police in the Chicano communities and with the undocumented alien.)

Baca - The issue on the chief issuing an operating policy on aliens is that the policy might work fine in theory, but before we even get to that step it's still our position, because of the harrassment, because of violations of the 4th and 14th amendment, that no solutions are going to be gotten by local police agencies. The only thing that is going to result from this (policy) is harrassment and intimidation of our communities.

Chief - I hear this rhetoric from him all the time. I don't buy it. Now you can say that. He's talking about the same thing. I don't see it. That's his perception. If it occurs, let me know, and if I don't correct it, we'll go from there. But that is not my policy. The policy is not to harrass. I agree with that part of his statement that local government cannot handle it (The flow of undocumented aliens). No question about it. It's the Federal Government's responsibility to do something about it. one way or another. They haven't met that responsibility as far as I am concerned.

L/P - You mean handle that responsibility here, or nationwide?

Chief - Nationwide, and specifically in this city. We have the biggest problem of any community.

L/P - Is there any way, in your opinion, how a group of people who are historically stigmatized and stereotyped into roles that are not very positive, can get the protection that they need and feel comfortable as citizens, without feeling fear of their police departments?

Chief - Really, you have the same recourses as every other person of this community has. File a complaint. Demand action. I will take action against any officer found guilty. I will suspend them, fire them, put them in jail. It all depends on the circumstances. My responsibility

is to give you officers that enforce the law and that do it in a humanistic manner. That's my goal. That's what I'm working towards. By and large, these officers do one outstanding job. I'm not going to tell you all cops are wonderful. No way. My job is to correct action that is not in compliance with my policies.

L/P - Policy is the biggest problem with all of us. There was a recent complaint made that the local police were stopping children under 14, Mexican children that is, who were playing in the playground. The officers asked them to produce ID cards. Is this policy?

Chief - Of course not.

L/P - There has also been information given to La Prensa, that children have been placed in holding tanks for up to 24 hours because they were monolingual. Is this also policy?

Chief - Of course not. You're going to have to give me more than generalities. Your talking about... That we do this and we do that... I want to know where and when.

L/P - All we are asking is, is it police department policy to...

Chief - It is not the police departments policy.

L/P - To not stop children under 14.

Chief - Of course not. Wait a minute, what time of night are you talking about?

L/P - In the playground.

Chief - In the afternoon, like that?

L/P - During the day.

Chief - No way.

L/P - Have you briefed your officers that children under 14 even if they are legally brought here, aren't given any documentation? That they are a part of the mother's documentation?

Chief - Of course. We know that 14-year-old kids aren't going to come alone.

L/P - This charge was given to us. I have to ask whether these acts are policy. The community will now know that it is not policy and they will blow the whistle next time it happens. Do you feel that what has been happening here, that is, your work with the INS, the Border Patrol, that it is jeopardizing the civil rights of the Mexican-Americans? It

seems impossible to control every individual officer in you department.

Chief - You're making the assumption that Mexican-Americans are being discriminated against by law enforcement agencies, because they are suspected of being illegal aliens. I am telling you that that's not the case with the SDPD. There are 280,000 people that have been apprehended so far this year trying to get into this country. That's what the paper said. That's what the Border Patrol said. Obviously, anybody that is interested in the sociological makeup of a community is going to say there has got to be some concern. The alien situation is in everybody's mind. If you're saying, does the impact of that have any negative impact on Mexican-Americans, I don't know for sure, but my intellect says yes. Because a lot of people are going to say ah-hah, look at all this coming across, and they are going to be looking at Mexican people negatively. If it was Israel, it would be the Jews. I just feel there may be some of that.

Baca - My position is that, first of all, that it's having a major impact. I go back to the deed versus the theory of this office. That whether he believes it to be rhetoric or not, the realities are that we are suffering the brunt. The reason we are suffering the brunt is because of official policies that give individual police officers the sanctions to go out into the community with this preconceived idea. To deny that racism exists in society, is ludicrous, and this is danger. A lot of times he (Chief Kollender) is asking for specifics. I think anyone who has ever lived in a Chicano community can very well state what their feelings are towards the police. That's a matter of attitude. Now many people have the recourses to come to even know where the Chief of Police is at? How many people have the resources to go to the NAACP, to go to the Civil Liberties Union. To apply the same standards that he is applying to other ethnic groups in this society, and say that they have the same recourses is ludicrous.

(Continued next week)